

PATRICIA C. ALKER

IBLA 83-100

Decided January 24, 1983

Appeal from a decision of the Nevada State Office, Bureau of Land Management, dismissing a protest against issuance of oil and gas lease, N-33329.

Set aside and referred for a hearing.

1. Administrative Procedure: Hearings -- Evidence: Sufficiency --
Hearings -- Rules of Practice: Hearings
Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Patricia C. Alker appeals a decision of the Nevada State Office, Bureau of Land Management (BLM), dated September 30, 1982, dismissing her protest against issuance of oil and gas lease, N-33329, to Anne Macheel. Macheel's simultaneous filing application was drawn first in the May 1981 drawing and the lease was issued effective July 1, 1981. Appellant, the second-qualified applicant, filed a protest against issuance of the lease to Macheel. BLM denied the protest and appellant appealed that decision. In Patricia C. Alker, 62 IBLA 150 (1982), BLM's decision was set aside and the case was remanded for further inquiry or investigation on whether Macheel's application conformed to the requirements of 43 CFR 3102.2-6(a) and (b).

Appellant's original protest was dismissed on April 28, 1982, after BLM determined that Macheel had complied with 43 CFR 3102.2-6(a). On June 1, 1982, appellant filed supplemental information in support of her protest. In a decision dated September 7, 1982, BLM requested information from Macheel concerning assistance by Barry Mohr in the preparation of her application. Macheel responded that Mohr had merely recommended Metropolitan Marketing Services, a filing service, and that the application was completed according to directions from the filing service. Based on this response, BLM dismissed appellant's protest against the issuance of the lease.

In a statement of reasons, appellant argues that BLM did not follow the directive given in the previous Alker decision and erred in dismissing her protest without exploring the matter more thoroughly than it did. Appellant claims that the actual inquiry made to Macheel was too narrow to develop all the information concerning the lease issuance and that irregularities between Macheel and Mohr should have alerted BLM to the likelihood that regulations were violated.

[1] In Patricia C. Alker, supra, we said:

Rather, an inquiry should have been begun by BLM to collect information from Anne Macheel so that BLM could determine whether the DEC should have been rejected because it did not conform to the requirements of 43 CFR 3102.2-6(a).

After an inquiry pursuant to this directive, BLM dismissed the protest. Appellant's burden is to establish by substantial evidence that the decision was improper or unreasonable. However, a substantial showing is not accomplished by assumptions. Evidence, such as affidavits which show assumption, surmise, or deduction, is insufficient. See Lynda Bagley Doye, 65 IBLA 340 (1982). We have repeatedly held that a protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified. Geosearch, Inc., 64 IBLA 149 (1982); Phillip A. Kulin, 53 IBLA 57 (1981).

Appellant suggests that Macheel may have entered into an arrangement with Mohr prior to filing the lease application and that her filing was done as an accommodation to Mohr. Departmental regulation, 43 CFR 3102.2-7, provides that a separate statement signed by "other parties in interest" and the applicant "setting forth the nature of any oral understanding between them, and a copy of any written agreement" must be filed not later than 15 days after the filing of the application. Failure to comply will result in rejection of the lease application or cancellation of any lease issued pursuant to the application. Rosita Trujillo, 60 IBLA 316 (1981). "Interest" in applications, offers, and leases is defined as a broad range of rights, including, "[a]ny claim or any prospective or future claim to an advantage or benefit from a lease." 43 CFR 3100.0-5(b). Under this definition, any undisclosed prearrangement would violate the disclosure requirements of 3102.2-7. Furthermore, because Mohr also filed for this parcel in the same drawing, such prefiling arrangement would violate 43 CFR 3112.4-2(c), which prohibits arrangements entered into prior to selection which give any party more than a single opportunity for successfully obtaining a lease or an interest therein. Any application made pursuant to such arrangement shall be rejected.

Appellant directs attention to circumstances which she claims are indicative of an undisclosed prior arrangement between Macheel and Mohr. In an affidavit, Henry A. Alker, appellant's husband, declares Macheel stated in a telephone conversation with him that Mohr had helped her in the preparation of her application. An assignment of the lease to Mohr was submitted to BLM on August 25, 1981, a short time after execution of the lease form, and for only one-fourth of one percent (0.25%) overriding royalty, a small amount in

relation to usual market transactions. Macheel made the assignment to Mohr despite a paid-for marketing service available to her as a result of her arrangement with Metropolitan Marketing Services. Appellant also points out that Macheel has submitted her street address to BLM spelled in three different ways and suggests that this reveals that she did not prepare all that has been submitted, but rather, has been assisted by others who may have interests in the lease.

Based upon the evidence offered, we cannot reasonably rule that Mohr did or did not have an arrangement with Macheel prior to filing the application. Appellant has not presented clear and substantial evidence that BLM's decision to dismiss her protest was improper. However, appellant's presentation is based upon facts which, left unexplained, suggest possible violations of the regulations. Macheel's mere assertion that Mohr did not assist in filing her application is insufficient to rebut an inference that Mohr may have had an undisclosed prior interest in the application. Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415. A hearing should be conducted where there are significant factual or legal issues remaining to be decided and the record would be insufficient for resolving them without a hearing. Stickelman v. United States, 563 F.2d 413, 417 (1977). The present record does not afford an adequate predicate for our determination of the critical issues raised by the appeal. Therefore, this case shall be referred to the Hearings Division, Office of Hearings and Appeals, for a hearing and determination on the significance of the relationship between Anne Macheel and Barry Mohr concerning oil and gas lease, N-33329, and possible arrangements made prior to filing the successful application for that parcel.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case referred for action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

